

# DICKSTEINSHAPIRO<sub>LLP</sub>

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July 30, 2008

## **By Electronic Filing**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th St., S.W., Room TW-325  
Washington, DC 20554

## **Ex Parte Communication**

**Re: WC Docket No. 08-92**

Dear Ms. Dortch:

During APCC Services' meeting with Commission staff on July 21, 2008, the staff requested additional information on APCC Services' position regarding the Commission's "alter ego" doctrine and related principles and how they apply to the relationships among True LD, LLC ("True LD") – the transferor-applicant in this domestic Section 214 asset transfer proceeding<sup>1</sup> – True LD's principal Jeffrey Larsen, and the related carriers West Star Telecommunications, LLC ("West Star"), and Global Access LD, LLC ("Global Access").

As the Commission and the courts have held, in carrying out its Communications Act responsibilities the Commission "is entitled to look through corporate entities and treat the separate entities as one for purposes of regulation."<sup>2</sup> In so doing, the Commission is not limited by "the strict standards of the common law alter ego doctrine."<sup>3</sup> Rather, the key consideration is

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<sup>1</sup> The instant application addresses only domestic Section 214 authority. There does not appear to be any related international Section 214 transfer application – nor, to APCC Services' knowledge, has True LD ever been granted international Section 214 authority. Yet, according to True LD's website, <[www.trueld.com](http://www.trueld.com)>, True LD offers "the most competitive rates available anywhere – domestic or international," and appears to specialize in offering cards geared to the U.S.-Latin America market – such as the "Todo Mexico" card which offers "Best rates to Mexico, Guatemala, Honduras and more." News releases on the site discuss products such as the "PEPITO," "DINAMITA," "SALE Y VALE," and "TVyNovelas" cards, all offering "great rates" to Mexico and/or Central and South America. See Exhibit 1 hereto (printouts of pages accessed at <[www.trueld.com](http://www.trueld.com)>). The Commission should inquire why True LD has not obtained Section 214 international resale authority and why True LD is not seeking FCC consent to transfer assets related to True LD's international prepaid card service.

<sup>2</sup> General Tel. Co. v. United States, 449 F.2d 846, 855 (5<sup>th</sup> Cir. 1971) ("General Tel. Co."); see also Mansfield Journal Co. (FM) v. FCC, 180 F.2d 28, 37 (D.C. Cir. 1950).

<sup>3</sup> Capital Tel. Co., Inc. v. FCC, 498 F.2d 734 (D. C. Cir. 1974) ("Capital").

whether “the statutory purpose could be easily frustrated through the use of separate corporate entities.”<sup>4</sup>

In the broadcast context, the Commission has provided specific guidance on how it will apply “alter ego” and related principles. For example, for purposes of attributing misconduct by a parent to its broadcast subsidiary, or vice versa, the Commission has stated:

As a general matter . . . if a close ongoing relationship between the parent and the subsidiary can be found, if the two have common principals, and if the common principals are actively involved in the day-to-day operations of the broadcast subsidiary, . . . [and] if the corporate parent is in any way involved in FCC-related misconduct, whether or not such misconduct involves the broadcast subsidiary, the bearing of that misconduct on the subsidiary’s qualifications would be considered.<sup>5</sup>

Similarly, in cases involving two related subsidiaries with shared principals, “FCC-related misconduct [by a related subsidiary] will be treated in the same fashion as that involving the parent-subsidiary relationship.”<sup>6</sup>

These same “alter ego” attribution principles apply in non-broadcast authorization proceedings, where the Commission also has a duty to inquire into prior misconduct and to “assess its relevance . . . consistent with the principles set forth in the character policy statement.”<sup>7</sup>

In the instant proceeding, the available evidence shows that True LD, West Star, and Global Access are closely related and share a common owner and officer, Jeffrey Larsen, who has been actively involved in the day-to-day operations of each carrier. Jeffrey Larsen is chairman<sup>8</sup> and managing member<sup>9</sup> of True LD, is the CEO,<sup>10</sup> “sole member” and “sole manager”

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<sup>4</sup> *General* at 855.

<sup>5</sup> *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1218-19 ¶ 79 (1986).

<sup>6</sup> *Id.* at 1220 ¶ 82.

<sup>7</sup> *Lockheed Martin Corp., COMSAT Government Systems, LLC, and COMSAT Corporation*, Order on Reconsideration, 17 FCC Rcd 13160, 13167 ¶ 17 (2002) (“*Lockheed*”) (citing *MCI Telecommunications Corp.*, Memorandum Opinion and Order, 14 FCC Rcd 11077 (1999)).

<sup>8</sup> See True LD’s Form 499-A.

<sup>9</sup> See Letter to Marlene H. Dortch from Robert F. Aldrich in WC Dkt. No. 08-92 (July 22, 2008) (enclosing documents on file with the Arizona Corporation Commission); Comments of APCC Services, WC Dkt. No. 08-92, Exhibit 3 (July 7, 2008) (“APCC Services Comments”).

of West Star,<sup>11</sup> and is President<sup>12</sup> and managing member<sup>13</sup> of Global Access. Larsen agreed to be personally responsible to make payments to settle West Star's unpaid debts to Thermo Credit, LLC.<sup>14</sup> True LD has used many of the same 800 access numbers as West Star for its prepaid cards, and shares a web site<sup>15</sup> and business address in Sandy, Utah, with Global Access.<sup>16</sup> True LD also routinely made payments on contracts entered into by Global Access.<sup>17</sup> In light of all this evidence of extremely "close ongoing relationships," the Commission has a duty to consider the alleged misconduct by West Star and Global Access in evaluating the instant transfer application.

The companies' relationships and alleged misconduct must be examined even though True LD is the proposed transferor, not the transferee. According to well-established Commission precedent, the Commission will consider the qualifications of a transferor like True LD – and closely related affiliates like West Star and Global Access, which are closely held by the same actively involved owner – where "issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant designation for hearing."<sup>18</sup> The Commission's policy regarding transferors is designed to prevent carriers from "evading responsibility for misdeeds committed during the license period."<sup>19</sup>

Here, the Commission itself, in the pending notices of apparent liability ("NALs") against West Star and Global Access, which are both owned and managed by Jeffrey Larsen, has raised serious issues concerning alleged "misdeeds." These issues are directly relevant to those two carriers' basic qualifications to hold Commission authorizations – and, accordingly, are equally relevant to the qualifications of the third Larsen-owned and managed company, True LD. Specifically, the repeated failures of West Star and Global Access to comply with requirements

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<sup>10</sup> See West Star's Form 499-A.

<sup>11</sup> See APCC Services Comments, Exhibit 1 at 2 ¶ II(B), Exhibit 2 at 1.

<sup>12</sup> See Exhibit 1 hereto.

<sup>13</sup> APCC Services Comments, Exhibit 3.

<sup>14</sup> *Id.*, Exhibit 4.

<sup>15</sup> Entering the web address <globalaccessld.com> leads one to the True LD website, which can also be reached via <trueld.com>.

<sup>16</sup> APCC Services Comments, Exhibit 3.

<sup>17</sup> Supplemental Comments of APCC Services, Exhibit 1 (filed July 14, 2008).

<sup>18</sup> See, e.g., *Applications of AT&T Inc. and Dobson Communications Corporation*, Memorandum Opinion and Order, 22 FCC Rcd 20295, 20302 ¶ 11 (2007) ("*AT&T/Dobson*") and cases cited therein at n.58.

<sup>19</sup> *Id.* n.58.

as basic as responding to complaints served by the Commission raise core issues as to the “proclivity” of those carriers (and therefore, of Larsen and True LD) “to comply with Commission rules and policies.”<sup>20</sup> Further, the fact that these companies will not even obey Commission orders to respond to complaints amply demonstrates the danger that granting the instant transfer application will enable them to “evad[e] responsibility”<sup>21</sup> for violations of FCC rules.

These carriers’ repeated failures to respond to complaints served on them are even more egregious because the complaints themselves allege violations of Commission rules that, as the Commission has expressly recognized, bear directly on whether the carriers are qualified to hold Section 214 authorizations. Recognizing that prepaid card service providers like True LD often try to “evad[e] responsibility” for payphone compensation, the Commission adopted rules specifically requiring all Completing Carriers to pay compensation in a timely manner, to establish dial-around call tracking systems, to conduct annual audits and file audit reports with the Commission regarding those systems, to provide quarterly Chief Financial Officer certifications of the accuracy of payments, and to provide quarterly call reports identifying all completed dial-around calls.<sup>22</sup> The Commission stated:

To the extent that the [carrier’s] payments are late or incomplete, the Commission may impose forfeitures or even revoke section 214 authorization, if we find that [carriers] have been lax in fulfilling their obligations. . . . In egregious cases, we may issue an Order to Show Cause why we should not revoke a [carrier’s] section 214 authority, and possibly bar the company’s principals from participation in interstate telecommunications business activities without first obtaining explicit permission from the Commission.<sup>23</sup>

To date, according to the pending informal complaints, West Star, Global Access, and True LD itself<sup>24</sup> have complied with *none* of these requirements. Such “egregious” noncompliance thus calls into question these carriers’ basic qualifications to hold Section 214 authorizations and heightens the level of scrutiny the Commission must give to the relationships among True LD, West Star, Global Access, and Larsen and to their apparent “proclivity” for noncompliance with the Commission’s rules.

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<sup>20</sup> *Lockheed*, 17 FCC Rcd at 13167 ¶ 18.

<sup>21</sup> *AT&T/Dobson* at 20302, n.58.

<sup>22</sup> *See* 47 C.F.R. §§ 64.1300-1320.

<sup>23</sup> Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 18 FCC Rcd 19975, 19998 ¶ 44 (2003).

<sup>24</sup> APCC Services’ informal complaint dated June 30, 2008 (File No. EB-08-MDIC-0042), was filed against all three Larsen-owned and managed carriers.

**DICKSTEINSHAPIRO<sub>LLP</sub>**

Marlene H. Dortch

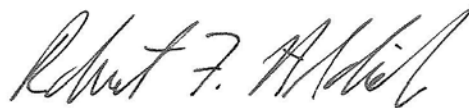
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In summary, to ensure that these companies and their common principal do not “evade responsibility for misdeeds” bearing on their basic qualifications to hold Commission authorizations, the Commission should not act on the pending transfer application until, at a minimum, both Jeffrey Larsen and the Larsen-owned carriers (1) resolve the pending NALs, (2) correct the violations raised in those proceedings by responding to the pending informal complaints, and (3) submit to the Commission’s jurisdiction in all pending NAL and complaint proceedings.

Further, because of the history of evasion by these companies and because True LD is proposing to dispose of substantially all its assets, there is a serious danger that, by the time the pending complaints are resolved, the Larsen-owned companies will not retain sufficient assets to be able to comply with a Commission order to pay the compensation owed. Therefore, the Commission should require True LD to post security, out of the proceeds of the sale, sufficient to cover the total amount of unpaid compensation alleged in the pending complaints.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich". The signature is fluid and cursive, with the first name "Robert" and last name "Aldrich" clearly distinguishable.

Albert H. Kramer

Robert F. Aldrich

*Attorneys for APCC Services, Inc.*

Enclosure

cc: Jodie May  
Dennis Johnson

## **EXHIBIT 1**





# TRUE LONG DISTANCE

TRUE SERVICE

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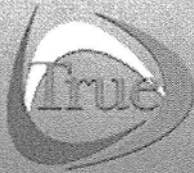
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# TRUE LONG DISTANCE

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## COMPANY PROFILE



### Company Background

True Long Distance is a privately held telecommunications carrier that specializes in the prepaid long distance and phone card business. The company provides prepaid calling services to retail, wholesale, promotional, and platform customers.

### News from the president

TLD announces move to larger facilities in Tucson. "With the tremendous growth we have been encountering here in the USA and in Mexico TrueLD has announced the move to our new facilities in Tucson which will help us keep up with the demand for our services now and in the near future" says John Vogel, President of TLD.

## WHERE WE DELIVER

► **Our number one priority**  
 To serve our customers by providing them with low domestic and international rates. To that end, we are constantly expanding our prepaid distribution products to accommodate a wide variety and range of pre-paid phone cards.

Our international prepaid phone cards and calling cards offer the lowest rates for calling to many countries, providing more minutes with no connection fees. True LD's management staff is made up of industry veterans who have an average of 10 years of telecom experience. The management team is comprised of leaders in the long distance, retail, prepaid, hardware, internet segments of the industry.

► **Our Focus**  
 True LD's focus is on customizing products that fit individual customer and market needs. The company's emphasis has been, and will continue to be, the technical and operational aspects of the business. This focused philosophy has made True LD a leader in the industry, enables True LD customers to aggressively market with the technical and operational concerns that tend to detract from marketing efforts.


## CUSTOMER SERVICE

True LD has earned a reputation of offering the best customer service in the industry. With the recent telecommunications industry changes, many providers have eliminated customer service from their operation providing a voice mail message instead. True LD remains committed to customer satisfaction and will work hard to keep every customer satisfied.

In the event that an end user needs clarification of a rate plan, or needs assistance with calling card utilization, True LD maintains a call center with trained employees to quickly resolve any issues that may arise.

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**True Long Distance**  
Summer 2007

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**NEWSBLOCK**

10.29.07  
■ **New card "PEPITO" launched**  
Great prepaid calling card, with no hidden fees, great rates that are excellent for Central and South America, great for cellular to central america call us now for distribution of this card.

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07.01.07  
■ **Release of the new "PEDRO INFANTE" set of cards** Pedro Infante was a beloved Mexican and now his image is memorialized on the Pedro Infante Prepaid Phone cards.

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05.01.07  
■ **New card "DINAMITA" launched**  
Great prepaid calling card, with no hidden fees, great rates to Mexico, Central and South America, call us now for distribution of this card.

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02.14.07  
■ **Buy NOW TVyNovelas card online**  
TVyNovelas card is now available online  
**Click here to buy NOW.**

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01.29.07  
■ **New card "SALE Y VALE" launched**

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# Prepaid Phone Cards

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01.29.07

■ **New card "SALE Y VALE" launched**  
Great prepaid calling card, with no hidden fees, great cellular rates that are excellent for Central and south America, call us now for distribution of this card.

01.08.07

■ **TvyNovelas New Card**  
TvyNovelas a popular hispanic Magazine just release it's new prepaid calling card to call México with great rates and zero hidden fees, use this card to also call Latinamerica. Call us now for distribution of this card.

06.01.06

■ **TLD moves into bigger facilities**  
TLD announces move to larger facilities in Tucson. "with the tremendous growth we have been encountering here in the USA and in México TrueLD has announced the move to our new facilities in Tucson which will help us keep up with the demand for our services now and in the near future" says John Vogel, President of TLD.

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